



**DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, DC 20224**

SMALL BUSINESS / SELF-EMPLOYED DIVISION

September 8, 2009

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Expiration Date: September 8, 2010  
IRM Impacted: IRM 5.8

**MEMORANDUM FOR DIRECTORS, COLLECTION AREA OPERATIONS  
DIRECTORS, CAMPUS COMPLIANCE OPERATIONS  
(Brookhaven and Memphis)**

**FROM:** Frederick W. Schindler/s/ Frederick W. Schindler  
Director, Collection Policy

**SUBJECT:** Reissuance of Interim Guidance for the Development of  
Potential Fraud in Offers in Compromise

The purpose of this memorandum is to reissue interim guidance memorandum dated August 21, 2008, with control number SBSE-05-0808-051, titled Interim Guidance for the Development of Potential Fraud in Offer in Compromise. These procedures establish steps that must be taken when developing fraud in an OIC case and appropriate closure actions when evidence of fraud is present. The procedures also establish actions that must be taken when an open criminal investigation is present on an OIC case.

The procedures attached to this memorandum will be incorporated in the next revision of the Internal Revenue Manual (IRM) 5.8, Offer in Compromise. The procedures are effective immediately. Please disseminate this information to all offer specialists, offer examiners, revenue officers, independent administrative reviewers and all managers with employees in these positions.

If you have any questions, please contact me, or a member of your staff may contact David Beach, OIC Program Analyst or Robin Comella, OIC Program Analyst. Field Offer, Field Collection and COIC personnel should elevate their questions through the appropriate management chain.

Attachment

cc: Chief Counsel  
National Taxpayer Advocate  
[www.irs.gov](http://www.irs.gov)

## Responsibility of Offer Specialists and Field Revenue Officers

When indicators of potential fraud arise during an offer investigation, the offer specialist (OS) will:

1. Work the case to the point where a decision regarding final disposition can be made. All requests for additional documentation should have been sent to the taxpayer and sufficient time allowed for the taxpayer to respond. Final action with respect to the determination will be taken if the case does not meet Fraud Technical Advisor (FTA) fraud referral criteria.
2. Discuss the indicators of fraud with the group manager before proceeding.

IF	THEN
The group manager concurs with the fraud potential	the OS will contact their local FTA and discuss the case
If the FTA agrees that there is potential fraud	<p>the OS will issue an "other investigation" (OI) on ICS to the Collection group that covers the geographic area where the taxpayer resides and mail a copy of all supporting documentation to the Collection group. After the OI has been issued, the OS will request assignment of the case on AOIC to 9998 (Fraud) and input a follow-up date on the AOIC "Follow-up" screen.</p> <p>the OI should indicate the 24 month mandatory acceptance date and that the investigation should be expedited. Note: Territory Manager intervention may be necessary if the OI is not being worked.</p> <p>the revenue officer (RO) assigned the other investigation will work with their local FTA to gather the information required and determine if the case has potential to be developed as a fraud referral.</p> <p>the Area office assigned the offer investigation will retain the offer pending the concurrence or non-concurrence of the local RO's FTA.</p>

If the RO's local FTA <b>does not</b> concur with the potential for fraud development	the RO will notify the OS and the OS will continue to work the offer investigation to resolution and request reassignment of the case on AOIC.
If the RO's local FTA concurs with the potential for fraud development	<p>the RO will prepare the F11661-A, Fraud Development Recommendation - Collection, and the FTA will denote their concurrence by signing the Form 11661-A.</p> <p>the RO will contact the OS as soon as their local FTA has signed the 11661-A.</p> <p>the OS will then return the offer under the criterion "(o)ther investigations are pending that may affect the liability sought to be compromised or the grounds upon which it was submitted."</p>
If, after 16 months from the IRS offer received date, the RO's local FTA has not made a decision whether the potential fraud development exists	return the offer under the criterion "other investigations are pending that may affect the liability sought to be compromised or the grounds upon which it was submitted."
If the taxpayer submits a subsequent offer and the RO's fraud investigation is still open	return the offer under the criterion "other investigations are pending that may affect the liability sought to be compromised or the grounds upon which it was submitted."

### Responsibility of Offer Examiners in Centralized Offer in Compromise (COIC)

When indicators of potential fraud arise during an offer investigation, the offer examiner (OE) will:

1. Work the case to the point where a decision regarding final disposition can be made. All requests for documentation should have been sent to the taxpayer and sufficient time allowed for the taxpayer to respond. Final action with respect to the determination will be taken if the case does not meet Fraud Technical Advisor (FTA) fraud referral criteria.
2. Discuss the case with their group manager.

IF	THEN
If the group manager concurs with the fraud potential,	contact the site's Collection Functional Fraud Coordinator (CFFC) and discuss the case.
If the CFFC agrees that the potential for fraud development exists	<p>the CFFC will secure concurrence from the FTA assigned to the campus.</p> <p>the FTA will evaluate the case and determine if sufficient information is present to refer the case directly to Criminal Investigation (CI) or if further development is needed.</p>
If the CFFC and FTA determines that further development is needed.	<p>the CFFC will prepare the F11661-A, Fraud Development Recommendation-Collection and obtain FTA concurrence. The CFFC will initiate an outgoing "other investigation" (OI) on ICS (sub coded 106) to the field Collection group that covers the geographic area where the taxpayer is located and mail a copy of all supporting documentation and a copy of the signed F1161-A to the Collection group. After the OI has been issued, assign the case on AOIC to 9998 (Fraud) and input a follow-up date on the AOIC "Follow-up" screen.</p> <p>the OI should indicate the 24 month mandatory acceptance date and that the investigation should be expedited.</p> <p><b>Note:</b> Territory Manager intervention may be necessary if the OI is not being worked. The OI will be assigned to a revenue</p>

	officer (RO) who will work with their local FTA to develop the fraud referral and make a determination if the potential for fraud development exists.
If the case does not need any further development.	the CFFC/FFC will prepare the 11661-A and secure campus FTA concurrence. The campus FTA will advise the OE how to refer directly to CI.
If the RO's local FTA concurs with the potential for fraud development	the RO's local FTA will denote concurrence by signing the F11661-A. The RO will notify the CFFC and the CFFC will have the offer returned as "other investigations are pending that may affect the liability sought to be compromised or the grounds upon which it was submitted."
If the RO's local FTA does not concur with the potential for fraud development	the RO will notify the CFFC and the CFFC will reassign the offer on AOIC to the group manager of the originating OE, who will then assign the case for offer investigation completion.
If, after 16 months from the IRS offer received date, the RO's local FTA has not made a decision whether the potential for fraud development exists	return the offer under the criterion "other investigations are pending that may affect the liability sought to be compromised or the grounds upon which it was submitted."
If the taxpayer submits a subsequent offer and the RO's fraud investigation is still open	return the offer under the criterion "other investigations are pending that may affect the liability sought to be compromised or the grounds upon which it was submitted."

Note: The CFFC will monitor the OIs monthly and report to the Operations Manager the current status of all open OIs. Close monitoring is needed to ensure that the Offer in Compromise (OIC) is resolved prior to the 24 month mandatory acceptance period.

**Open Criminal Investigations**

Open criminal investigations can be identified on IDRS by an unreversed transaction code (TC) 914, TC 916 or TC 918. Cases with a TC 910 are being monitored by Criminal Investigation (CI). When these transaction codes are discovered contact must be made with the assigned Special Agent and procedures in IRM 5.1.5 followed. It may be necessary for the group or unit manager to contact the CI manager to determine the next appropriate action. A decision will need to be made on the appropriate actions to take and what may or may not be discussed with the taxpayer.

**NOTE:** CI should be advised of the Tax Increase Prevention and Reconciliation Act (TIPRA) law which includes a provision for automatic acceptance of the offer if a decision on the offer has not been reached within 24 months. We can no longer hold offers open indefinitely pending their criminal investigation.

Once a taxpayer has been advised of the open criminal investigation, if the assigned Special Agent has no objection, the taxpayer may be asked to withdraw the offer until the criminal matter is resolved. If the taxpayer declines to withdraw the offer, return the offer to the taxpayer under the criterion “(o)ther investigations are pending that may affect the liability sought to be compromised or the grounds upon which it was submitted.” If the Special Agent objects to asking the taxpayer to withdraw the offer or contacting the taxpayer, remind the Special Agent of the 24 month mandatory acceptance requirement. If the Special Agent continues to request that the taxpayer not be contacted, reassign the case on AOIC to 9999. Monitor the case and contact the Special Agent monthly to determine if and when taxpayer contact may be made. If, after six months from the IRS received date, CI has not made a decision about what may or may not be discussed with the taxpayer, return the offer under the criterion “other investigations are pending that may affect the liability sought to be compromised or the grounds upon which it was submitted.”